## Department of Health and Environment

## Division of Health Care Finance

Notice of Hearing on Proposed Administrative Regulation

A public hearing will be conducted at 9 a.m. on December 31, 2013 in Room 900-N of the Landon State Office Building, 900 S.W. Jackson, Topeka, to consider the proposed adoption of new rules and regulations and changes to existing rules and regulations involving the Kansas Medicaid and the Children's Health Insurance Programs administered by the Division of Health Care Finance, Kansas Department of Health and Environment.

Chapter 187, 2005 Session Laws of Kansas transferred specific powers, duties and regulatory authority from the Department of Social and Rehabilitation Services to the Division of Health Policy and Finance (DHPF) within the Department of Administration, and then transferred those powers, duties and regulatory authority to the Kansas Health Policy Authority (KHPA), effective July 1, 2006. Executive Reorganization Order (ERO) No. 38 has transferred these powers, duties and regulatory authority to the Kansas Department of Health and Environment, Division of Health Care Finance. The ERO provides that KDHE will be the single state agency for Medicaid, Medikan, and Children's Health Insurance Programs in Kansas effective July 1, 2011.

This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulation as stated in K.S.A. 2012 Supp. 77-421(a)(3). All interested parties may submit written comments before the hearing to Rita Haverkamp, KDHE, Division of Health Care Finance, Room 900-N, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612-1220, or by email at RHaverkamp@kdheks.gov. The Division of Health Care Finance will give all interested parties a reasonable opportunity to present their views at the hearing, but it may be necessary to request each participant to limit any oral presentation to five minutes.

A copy of the regulation and the economic impact statement may be obtained by contacting Rita Haverkamp at 785-296-5107 or from the DHCF website at <a href="https://www.kdheks.gov">www.kdheks.gov</a>.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days before the hearing by contacting Rita Haverkamp at 785-296-5107 or by calling the Kansas Relay Center at 800-766-3777.

A summary of the regulations and the economic impacts follows:

**Proposed Revocations:** K.A.R. 30-6-34, 30-6-35, 30-6-36, 30-6-39, 30-6-40, 30-6-41, 30-6-50, 30-6-51, 30-6-52, 30-6-53, 30-6-54, 30-6-55, 30-6-56, 30-6-60, 30-6-63, 30-6-65, 30-6-70, 30-6-78, 30-6-80, 30-6-81, 30-6-82, 30-6-85, 30-6-86, 30-6-87, 30-6-88, 30-6-89, 30-6-91, 30-6-94, 30-6-95, 30-6-103, 30-6-106, 30-6-107, 30-6-108, 30-6-109, 30-6-110, 30-6-111, 30-6-112, 30-6-113, 30-6-120, 30-6-140, 30-6-150, 30-14-1, 30-14-2, 30-14-3, 30-14-20, 30-14-21, 30-14-23, 30-14-24, 30-14-25, 30-14-26, 30-14-28, 30-14-29, 30-14-30, 30-14-31, 30-14-50, 129-6-38, 129-6-77, 129-14-22

**Proposed Regulations: K.A.R. 129-1-1.** Definitions. This new article and regulation provide specific definitions of terms used in regulations throughout subsequent articles regarding the medical assistance and Children's Health Insurance Program.

- **K.A.R. 129-2-1.** Uniformity of interpretation. This new article and regulation adopts current policy which requires contracted staff to follow department policy as interpreted in manuals, other policy materials, and official communication releases.
- **K.A.R. 129-2-2.** Fees for providing copies. This new article and regulation adopt current policy regarding costs that can be charging when providing copies of official department documents and records.
- **K.A.R. 129-6-30**. Implementation of provisions specific to the ACA. This new regulation is being promulgated to apply new Medicaid eligibility provisions required by the Patient Protection and Affordable Care Act (ACA) to eligibility determinations made on or after November 1, 2013.
- **K.A.R. 129-6-34.** Definitions; covered groups. This new regulation is being promulgated to define terms used throughout this article for the Medicaid program.

- **K.A.R. 129-6-35.** Application process. This new regulation adopts current policy that was previously contained in K.A.R. 30-6-35 and includes new requirements for applying to the medical assistance program by use of a department-approved form and through the state application website. It has also been modified to recognize electronic and telephonic signatures.
- **K.A.R. 129-6-36.** Redetermination of eligibility process. This new regulation adopts and modifies current policy that was previously contained in K.A.R. 30-6-36 and includes requirements for the recipient regarding redetermination of eligibility on an annual or an as-needed basis.
- **K.A.R. 129-6-39.** Responsibilities of applicants and recipients. This regulation has been amended to make only technical clarifications to current policy previously contained in K.A.R. 30-6-39.
- **K.A.R. 129-6-41.** Assistance planning for MAGI-based coverage groups. This new regulation adopts a change in policy regarding the composition of the assistance plan for the family, as required by federal law.
- **K.A.R. 129-6-42**. Assistance planning for MAGI-excepted coverage groups. This new regulation adopts current policy previously reflected in K.A.R. 30-6-41 regarding composition of the assistance plan for persons in independent living and for persons in long term care arrangements.
- **K.A.R. 129-6-50.** Determined eligibles; general eligibility factors. This new regulation adopts current policy previously reflected in K.A.R. 30-6-50 regarding the applicability of general eligibility factors in the medical assistance programs.
- **K.A.R. 129-6-51.** General eligibility requirements. This new regulation adopts current policy previously reflected in K.A.R. 30-6-51. Eligibility shall continue to be based on information provided by the individual. The use of electronic data matches in the eligibility process is expanded with additional entities.
- **K.A.R. 129-6-52.** Act in own behalf. The new regulation incorporates current policy previously reflected in K.A.R. 30-6-52 regarding the requirement that each applicant and recipient have the legal capacity to apply for and receive assistance in one's own behalf.
- **K.A.R. 129-6-53.** Financial eligibility for MAGI-based coverage groups.

This new regulation adopts changes in policy regarding how financial eligibility is determined for a family. Such eligibility shall be based on the income of the tax household which includes the sum of the modified adjusted gross income (or MAGI) of each household member. The methods used to determine MAGI shall follow the rules specified in the Internal Revenue Code, with certain exclusions. Current policy regarding continuous eligibility for children is also incorporated in this regulation.

- **K.A.R. 129-6-54.** Financial eligibility for MAGI-excepted coverage groups. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-53 regarding the determination of financial eligibility including the determination of eligibility base periods for both independent and long term care living arrangements.
- **K.A.R. 129-6-55.** Residence, citizenship, and alienage. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-54 regarding the requirement that each applicant or recipient be a resident of the State of Kansas for eligibility purposes. This regulation also incorporates current policy regarding the requirement that each applicant or recipient be a citizen or legally recognized non-citizen of the United States for eligibility purposes.
- **K.A.R. 129-6-56.** Cooperation. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-55 regarding the applicant's and recipient's cooperation in meeting certain eligibility requirements.
- **K.A.R. 129-6-57.** Transfer of assets. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-56 regarding the impact of transferring assets on eligibility for medical assistance and includes additional changes resulting from implementation of the Deficit Reduction Act of 2005.
- **K.A.R. 129-6-60.** Public institution. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-60 regarding the effect of residing in a public institution. Persons residing in such institutions are not eligible except as otherwise noted in this regulation.
- **K.A.R. 129-6-63.** Assignment of rights to support and other third party payments. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-63 regarding the requirement that each applicant or recipient assign the rights to medical support or other third party payments for medical care, on behalf of any individual for whom medical assistance is claimed, to the Secretary.

- **K.A.R. 126-6-65.** Automatic eligibles. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-65 regarding individuals who are eligible for medical assistance without meeting further requirements. .
- **K.A.R. 129-6-70.** Medicaid determined eligibles; eligibility factors specific to qualifying families. This new regulation is being promulgated to implement current policy regarding coverage of families who meet the minimal income standards reflected in this regulation.
- **K.A.R. 129-6-71.** Medicaid determined eligibles; poverty-level pregnant women. This new regulation is being promulgated to implement current policy regarding coverage of pregnant women who meet the poverty level standard reflected in this regulation.
- **K.A.R. 129-6-72.** Medicaid determined eligibles; poverty-level children. This new regulation is being promulgated to implement current policy regarding coverage of children up to age 19 who meet the poverty level standards reflected in this regulation, depending upon the age of the child.
- **K.A.R. 129-6-73**. Medicaid determined eligibles; eligibility factors specific to pregnant women. This new regulation is being promulgated to implement current policy regarding medically needy coverage of pregnant women who do not the eligibility criteria of the poverty-level group described in K.A.R. 129-6-71.
- **K.A.R. 129-6-74.** Medicaid determined eligibles; eligibility factors specific to children. This new regulation is being promulgated to implement current policy regarding medically needy coverage of children up to age 19 who do not meet the eligibility criteria of the poverty-level group described in K.A.R. 129-6-72.
- **K.A.R. 129-6-80.** Medicaid determined eligibles; eligibility factors specific to children in foster care. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-80 and 30-6-95 regarding coverage of children in foster care who are placed in an approved living arrangement and have a written court order placing care, custody, and control of the child in accordance with this regulation.
- **K.A.R. 129-6-81.** Medicaid determined eligibles; eligibility factors specific to children living in medicaid-accredited psychiatric hospitals, intermediate care facilities, or residential treatment facilities. This new regulation is being

- promulgated to implement current policy previously reflected in K.A.R. 30-6-81 regarding coverage of children receiving inpatient psychiatric care in a state psychiatric institution or a residential treatment facility.
- **K.A.R. 129-6-82.** Medicaid determined eligibles; eligibility factors specific to HCBS. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-82 regarding coverage of individuals who are assessed as in need of long term care services and choose home and community based services within an approved waiver.
- **K.A.R. 129-6-83.** Medicaid determined eligibles; eligibility factors specific to PACE. This new regulation is being promulgated to implement current policy for the Program of All-Inclusive Care for the Elderly (PACE).
- **K.A.R. 129-6-84.** Medicaid determined eligibles; eligibility factors specific to work opportunities reward Kansans (WORK). This new regulation is being promulgated to implement current policy regarding coverage of disabled persons who are working and authorized by the Secretary to need WORK services in order to live and work in the community.
- **K.A.R. 129-6-85.** Medicaid determined eligibles; eligibility factors specific to the aged, blind, and disabled (ABD). This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-85 regarding coverage of individuals who are aged, blind or disabled based on social security administration (SSA) criteria.
- **K.A.R. 129-6-86.** Poverty-level, low income, and expanded low- income Medicare beneficiaries. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-86 regarding coverage of individuals who are entitled to Medicare Part A benefits and meet specified income and resource guidelines. Coverage is limited to payment of allowable Medicare premiums, deductibles, and co-insurance.
- **K.A.R. 129-6-87.** Poverty-level working disabled individuals; determined eligibles. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-87 regarding coverage of individuals who are working and entitled to Medicare Part A benefits. This program is referred to in policy as the Qualified Working Disabled program.
- **K.A.R. 129-6-88.** Disabled individuals with earned income; determined eligibles.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-88 regarding coverage of disabled individuals who are working and who meet specified income and resource guidelines. This program is referred to in policy as the Working Healthy Program.

- **K.A.R. 129-6-89.** Individuals with breast or cervical cancer; determined eligibles. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-89 regarding coverage of individuals screened for breast or cervical cancer who are uninsured and who are under age 65.
- **K.A.R. 129-6-91.** Youth formerly in foster care; determined eligibles. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-91 regarding overage of children in the custody of the Department for Children and Families or the Department of Corrections and who are 18 or older. It also incorporates a new policy establishing a maximum age of 26 for coverage as now required by federal law.
- **K.A.R. 129-6-94.** Non-Medicaid determined eligibles; eligibility factors specific to persons living in nursing facilities for mental health. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-94 regarding coverage of persons between the ages of 21 and 65 who have a severe and persistent mental illness and receiving inpatient treatment in a nursing facility for mental health.
- **K.A.R. 129-6-95.** Non-Medicaid determined eligibles; eligibility factors specific to the medikan program. This new regulation is being promulgated to implement policy regarding the Medikan program for persons who are not eligible for Medicaid. The program is being delinked from the General Assistance program operated by DCF.
- **K.A.R. 129-6-96.** Continuous eligibility for children and certain adult eligibles. This new regulation is being promulgated to implement current policy regarding continuous medical coverage for children under the age of 19 who become eligible for Medicaid. This regulation has been further amended to provide this same coverage to adults who are eligible under the provisions of K.A.R. 129-6-70.
- **K.A.R. 129-6-97.** Emergency medical service for certain noncitizens. This new regulation is being promulgated to implement current policy regarding coverage of emergency medical services to noncitizens who do not meet the qualifying noncitizen provisions of K.A.R. 129-6-55, as required by federal law. Coverage is

- limited to treatment of an emergency medical condition as defined in this regulation.
- **K.A.R. 129-6-103.** Determined eligibles; income standards. This new regulation is being promulgated to implement and amend current policy previously reflected in K.A.R. 30-6-103 regarding income standards used to determine eligibility across all of the medical programs.
- **K.A.R. 129-6-106.** General requirements for consideration of resources, including real property, personal property, and income. This new regulation is being promulgated to implement and amend current policy previously reflected in K.A.R. 30-6-106 regarding treatment of resources.
- **K.A.R. 129-6-107.** Property exemption. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-107 regarding resource standards as well as higher standards which were put into place as a result of MIPPA. This regulation also the higher standards are applicable to poverty-level Medicare beneficiaries under K.A.R. 129-6-86, working disabled individuals under K.A.R. 129-6-87, and other specific groups.
- **K.A.R. 129-6-108.** Real property. This new regulation is being promulgated to implement and further amend current policy previously reflected in K.A.R. 30-6-108 regarding consideration of real property and real property that is exempted for eligibility purposes. This regulation now includes a provision regarding substantial home equity.
- **K.A.R. 129-6-109.** Personal property. This new regulation is being promulgated to implement and further amend current policy previously reflected in K.A.R. 30-6-109 regarding consideration of personal property, including annuities, life insurance and burial plans.
- **K.A.R. 129-6-110**. Income. This new regulation adopts and amends current policy previously reflected in K.A.R. 30-6-110 concerning treatment of income rules for both MAGI and MAGI-excepted coverage groups.
- **K.A.R. 129-6-111.** Applicable income. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-111 regarding the determination of applicable income available for MAGI and MAGI-excepted coverage determinations.

- **K.A.R. 129-6-112.** Income exempt from consideration as income and as a cash asset for MAGI-excepted coverage groups. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-112 regarding income that is exempt in the determination of eligibility. These rules now only apply to the MAGI-excepted coverage groups.
- **K.A.R. 129-6-113.** Income exempt as applicable income for MAGI-excepted coverage groups. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-113 regarding income exempt as applicable income in the determination of eligibility. These rules now only apply to the MAGI-excepted coverage groups.
- **K.A.R. 129-6-120.** Eligibility before the month of application. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-120 regarding coverage for the 3 months prior to the month of application.
- **K.A.R. 129-6-140**. Correction and discontinuance of assistance. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-140 regarding overpayments and discontinuance of assistance.
- **K.A.R. 129-6-150.** Estate recovery. This new regulation incorporates current policy previously reflected in K.A.R. 30-6-150 and implemented through federal and state law regarding the department's use of liens, claims, agreements and other collection methods used in estate recovery.
- **K.A.R. 129-6-151.** Presumptive eligibility. This current regulation has been amended to include pregnant women who are at least 18 years of age and to add an additional qualifying criteria for children by excluding those residing in a public institution per K.A.R. 129-6-60.
- **K.A.R. 129-6-152.** Presumptive eligibility when determined by qualified entities other than qualified hospitals. This current regulation has been amended to add a new provisions contained in K.A.R. 129-6-153 and to modify the description of a qualified entity who can do presumptive eligibility per 42 C.F.R. 435.1101 and 435.1103.
- **K.A.R. 129-6-153.** Presumptive eligibility when determined by qualified hospitals. This new regulation implements new policy. It allows certain hospitals to make presumptive eligibility determinations as required by federal law.

- **K.A.R. 129-14-2.** Definitions. This new regulation adopts definitions that were previously contained in K.A.R. 30-14-2 and includes new definitions.
- **K.A.R. 129-14-3.** Providers. This new regulation adopts current policy that was previously contained in K.A.R. 30-14-3. It requires managed care contractors to be selected by the Secretary and demonstrate the ability to meet contract requirements.
- **K.A.R. 129-14-20.** Application process. This new regulation adopts current policy that was previously contained in K.A.R. 30-14-20 and includes requirements for applying to the KanCare-CHIP program. It has also been modified to recognize electronic and telephonic signatures.
- **K.A.R. 129-14-21.** Reenrollment process. This new regulation adopts and modifies current policy that was previously contained in K.A.R. 30-14-21 and includes requirements for the recipient regarding reenrollment in the KanCare-CHIP program on an annual or an as-needed basis.
- **K.A.R. 129-14-23.** Responsibilities of applicants and recipients. This regulation has been amended to make only technical clarifications to current policy.
- **K.A.R. 129-14-25.** Act in own behalf. The new regulation incorporates current policy previously reflected in K.A.R. 30-14-25 regarding the requirement that each applicant and recipient have the legal capacity to apply for and receive assistance in one's own behalf.
- **K.A.R. 129-14-26.** Residence. This new regulation incorporates current policy previously reflected in K.A.R. 30-14-25 regarding the requirement that each applicant or recipient be a resident of the State of Kansas for eligibility purposes.
- **K.A.R. 129-14-27.** Citizenship and alienage. This currently existing regulation has been amended to incorporate previously existing policy in K.A.R. 30-14-25 and adopt new policy allowing the use of matching with Social Security data base for citizenship information before requesting hard copy documents.
- **K.A.R. 129-14-28.** Cooperation. This new regulation incorporates current policy previously reflected in K.A.R. 30-14-25 regarding the applicant's and recipient's cooperation in meeting certain eligibility requirements.

- **K.A.R. 129-14-30.** Public institution. This new regulation incorporates current policy previously reflected in K.A.R. 30-14-25 regarding the effect of residing in a public institution on eligibility for KanCare-CHIP.
- **K.A.R. 129-14-31.** Insurance coverage. This new regulation adopts current policy previously reflected in K.A.R. 30-14-26 regarding health insurance coverage and eligibility for KanCare-CHIP.
- **K.A.R. 129-14-32.** Premium payment requirement. This new regulation adopts and amends current policy previously reflected in K.A.R. 30-14-28 regarding the requirement for paying a monthly premium for KanCare-CHIP coverage.
- **K.A.R. 129-14-33.** Assistance plan. This new regulation adopts a change in policy regarding the composition of the assistance plan for the family. The assistance plan shall now be determined based on who is included in a person's tax household.
- **K.A.R. 129-14-34.** Financial eligibility. This new regulation adopts changes in policy regarding how financial eligibility is determined for a family. Such eligibility shall be based on the income of the tax household which includes the sum of the modified adjusted gross income (or MAGI) of each household member minus an amount equivalent to five percentage points of the federal poverty level for the applicable family size. The monthly income limit shall now be established by the Secretary and converted to MAGI-equivalent numbers in accordance with 42 C.F.R. 457.300 et seq. Current policy regarding continuous eligibility for children is also incorporated in this regulation.
- **K.A.R. 129-14-35.** Treatment of income. This new regulation adopts and amends current policy previously included in K.A.R. 30-14-29 concerning treatment of income rules in the KanCare-CHIP program.
- **K.A.R. 129-14-36.** Applicable income. This new regulation incorporates current policy previously reflected in K.A.R. 30-14-30 regarding the determination of applicable income and has been further amended to reflect use of the modified adjusted gross income methodologies.
- **K.A.R. 129-14-37.** Overpayments. This new regulation incorporates current policy regarding the determination and repayment of overpayments whether caused by the individual or department.

- **K.A.R. 129-14-40.** Discontinuance of assistance. This new regulation incorporates current policy regarding the discontinuance of a recipient's participation in the KanCare-CHIP program when the recipient no longer meets one or more of the eligibility requirements.
- **K.A.R. 129-14-50.** Scope of services. This new regulation incorporates current policy previously reflected in K.A.R. 30-14-50 regarding services which are provided to KanCare-CHIP eligible children. Such services shall be the services provided through the Kansas Medicaid program.
- **K.A.R. 129-14-51**. Presumptive eligibility. This current regulation has been amended to remove reference to the Healthwave program and to modify the eligibility criteria for qualifying children to reflect the regulatory changes made in this submission.
- **K.A.R. 129-14-52.** Presumptive eligibility to be determined by qualified entities. This current regulation has been amended to remove reference to the Healthwave program and to modify the description of a qualified entity by adopting the federal requirements at 42 C.F.R. 435.1100.

**Federal Mandate:** For proposed changes to Article 1 and 2, there are no federal mandate. For Article 6 and 14, there are federal mandates. The proposed regulations do not exceed the federal mandates.

**Economic Impact:** For proposed changes to Article 1 and 2, there are no economic impacts upon the agency. For proposed changes to Article 6, it is estimated that increased service costs will be \$2.55 million. These changes will require modification of the Medicaid Management Information System (MMIS) for implementation. The Article 6 MMIS costs are estimated as \$1.694 million in FY14 and \$616,000 in FY15. For proposed changes to Article 14, it is estimated that increased service costs will be \$1.2 million. These changes will require modification of the Medicaid Management Information System (MMIS) for implementation. The Article 14 MMIS costs are estimated as \$506,000 in FY14 and \$184,000 in FY15. There is estimated to be an additional \$1.2 million for premium billing services for the proposed changes to Article 14.

**Bearer of Costs:** There will no additional costs to the Medicaid recipients or to other governmental agencies.

Affected Parties: Medicaid and KanCare CHIP recipients.

Other Methods: For proposed changes to Article 1 and 2, no less costly method was identified. For proposed changes to Article 6, adoption of a subset of temporary regulations was considered but rejected. Retention of Article 30-6 regulations were also considered. However, with the federal changes that are mandated, retaining some of the regulations in Article 30-6 would be confusing to the general public and others accessing the relevant regulations. Since Article 6 is a set of inter-related rules and regulations necessary to administer the KanCare program, the concentration of the regulations into one Article was favored. Similar considerations were also examined for the proposed Article 14 regulations. Revocation of existing Article 30-14 regulations and concentration of KanCare CHIP regulations into Article 129-14 was favored.

Kari Bruffett, Director Division of Health Care Finance